

Appl. No. 10/645,226  
Response dated July 14, 2004  
Reply to Office Action of July 1, 2004

### **REMARKS/ARGUMENTS**

The Examiner has objected to the drawings for supposedly failing to show a “circumferential lip” and has called for corrected drawings.

In response, applicant points out that there is no element in the drawings denominated a “circumferential lip.” If the Examiner is referring to the lip 12, the same is shown in FIG. 3. On the other hand, if the Examiner is referring to the circumferential flange 36, that element is shown in FIGS. 6-8. In the event the Examiner persists in this objection, clarification is respectfully requested.

Claims 1-6 stand rejected under 35 USC 102(b) as being anticipated by Ostrowsky U.S. Patent No. 4,487,324 (Ostrowsky), the Examiner reasoning that Ostrowsky discloses a container and closure, the closure comprising a flip top 14, a hinge 48, a tear strip 66 [sic], a threaded cap 20 and ratchet teeth 29.

This rejection is respectfully traversed for the following reasons. It is well-settled that in order for there to be anticipation, the prior art reference must disclose each and every claim limitation arranged in precisely the same relationship as claimed by applicant. Verdegall Bros. v. Union Oil Co., 2 USPQ2d 1051, 1053 (Fed Cir 1987). Here, Ostrowsky does not disclose a cylindrical container, nor a circumferential lip on the open end of the cylindrical container, nor a ratchet tooth ring on the cylindrical container proximal to the open end of the container, all as claimed by applicant in claim 1(a). The only drawing of Ostrowsky depicting a container C comprises FIG. 6. It is impossible to determine from FIG. 6 whether the container is cylindrical, and the only statement found in the Ostrowsky specification is that the container may

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be a squeezable bottle. See column 2, lines 53-54. The Examiner may take official notice that squeezable bottles come in many shapes. Further, Ostrowsky's ratchet teeth 29 are found on the inside of skirt 20 of the closure 10. Since claims 2-6 all depend from claim 1 and so contain the same limitations as does claim 1, those claims are distinguishable from Ostrowsky as well. Accordingly, withdrawal of the anticipation rejection of claims 1-6 is respectfully requested.

Claims 1-8 stand rejected under 35 USC 103(a) as being unpatentable over Anderson U.S. Patent No. 6,530,493 (Anderson) in view of Uhlig U.S. Patent No. 4,533,058 (Uhlig), the Examiner reasoning that Anderson discloses in FIGS. 10 and 12 a container and a closure with a flip-top cap 16A, a tear strip 40, a threaded cap 14A and a sealing flange 46 that seals a container having a circumferential lip. The Examiner concedes that Anderson does not teach ratchet teeth but instead discloses a tamper evident ring. The Examiner further reasons that Uhlig discloses a ratchet tooth connection between a threaded cap and a container neck in FIG. 5, then concludes that it would have been obvious to one of ordinary skill in the art to modify the Anderson container closure assembly by substituting a ratchet tooth connection for a tamper evident ring.

In response, applicant points out that the "tear strip" 40 referred to by the Examiner is one and the same element as the "tamper evident ring" referred to by the Examiner. See column 5, lines 22-27, which refer to a tamperproof seal 40. Assuming for purposes of argument that the Examiner is correct that one of ordinary skill would have found it obvious to substitute the Uhlig ratchet tooth connection for the Anderson tamperproof seal 40, this combination would not yield that which is claimed by applicant, namely, both a frangible strip

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(corresponding to Anderson's tamperproof seal 40) and ratchet toothed rings in both the container and the cap. Accordingly, this obviousness rejection is submitted to be inappropriate and applicant respectfully requests that it be withdrawn.

Finally, claims 7-8 stand rejected under 35 USC 103(a) as being unpatentable over Ostrowsky in view of Wagner U.S. Patent No. 6,481,588 (Wagner), the Examiner reasoning that Ostrowsky teaches a sealing flange 30 to seal the circumferential lip of a container, and conceding that the circumferential lip of Ostrowsky is disposed in the cap and not in the flip-top 14. However, the Examiner asserts that Wagner teaches that it is known to provide a flip-top cap with a sealing flange to seal the circumferential lip of a container, and concludes that it would have been obvious to one of ordinary skill in the art to modify the Ostrowsky closure assembly by providing the sealing flange 30 on the container flip-top as taught by Wagner.

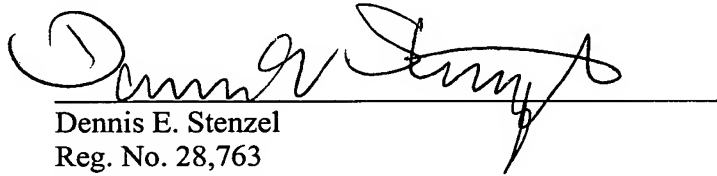
In response, applicant respectfully points out that Wagner's sealing flange C is not on the container flip-top, but rather is on the receptacle or container. See Wagner FIG. 2 and at column 2, line 32. For this reason, the Examiner's rejection of claim 7, which calls for an inner circumferential flange as part of the flip-top, is submitted to be without proper foundation. Moreover, the Examiner appears to have ignored the limitation found in claim 8 calling for a tongue portion on the inner circumferential flange of the flip-top which is capable of guiding the inner circumferential flange into alignment with the circumferential lip of the container, since the Examiner points to no teaching in either Ostrowsky or Wagner showing this element or such an arrangement of elements. Accordingly, the obviousness rejection of claim 8 is also submitted to

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be without proper foundation. Because this obviousness rejection of claims 7-8 is without proper foundation, applicant respectfully requests that it be withdrawn.

For the reasons stated, early and favorable reconsideration is respectfully requested.

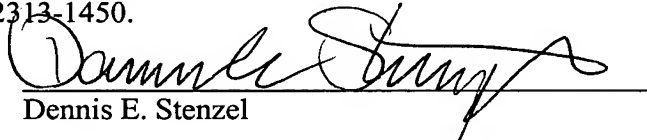
Respectfully submitted,

  
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7/14/04  
Date

  
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